

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANTONIO GRAHAM,

Petitioner,

v.

No. CV 14-0524 WJ/KBM

TIMOTHY HATCH, WARDEN,

Respondent.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Petitioner's Response and Objections to Magistrate Judge's Findings and Recommended Disposition (Doc. 7). The Court construes the filing as a fourth or successive petition and will dismiss the petition.


As a preliminary matter, the document that Petitioner challenges is a final order and not a recommended disposition. Second, the motion seeks relief from this Court's order (Doc. 5) which dismissed Petitioner's third § 2254 petition attacking a single state court judgment. The motion raises both substantive and procedural objections to the dismissal order, and thus amounts to a fourth § 2254 petition, *see In re Rains*, 659 F.3d 1274, 1275 (10th Cir. 2011) (per curiam), and the Court may not consider the application unless the Tenth Circuit Court of Appeals authorizes the proceeding, *see Thornbrugh v. United States*, 424 F. App'x 756, 759 (10th Cir. 2011).

"When a second or successive § 2254 or § 2255 claim is filed in the district court without the required authorization from this court, the district court may transfer the matter to [the court of appeals] if it determines it is in the interest of justice to do so under [28 U.S.C.] § 1631, or it may dismiss the motion or petition for lack of jurisdiction." *In re Cline*, 531 F.3d 1249, 1252 (10th Cir. 2008). The instant petition amounts to Petitioner's fourth § 2254 petition and is not accompanied by an authorizing order. The Court of Appeals for the Tenth Circuit has previously

denied authorization, and, therefore, according to the factors noted in *Cline*, 531 F.3d at 1251, this Court will dismiss Petitioner's petition for lack of jurisdiction.

Furthermore, under rule 11 of the Rules Governing Section 2254 Cases, the Court *sua sponte* determines that Petitioner has failed to make a substantial showing that he has been denied a constitutional right. The Court will therefore deny a certificate of appealability. The Court also notifies Petitioner, again, that filing of further habeas corpus pleadings attacking the same conviction or sentence may result in imposition of filing restrictions.

IT IS THEREFORE ORDERED that Petitioner's Response and Objections to Magistrate Judge's Findings and Recommended Disposition (Doc. 7), construed herein as a fourth or successive petition, is DISMISSED for lack of jurisdiction, a certificate of appealability is DENIED, and judgment will be entered.


UNITED STATES DISTRICT JUDGE